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NO. 91-1413

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PATRICIA THOMPSON
EDDIE THOMPSON, JR.,

Petitioners,

vs.

PEOPLES LIBERTY BANK
AKA STAR BANK OF KENTON COUNTY, INC.

RALPH HAILE, RICHARD NELSON, RICHARD SLUKICH, CITY OF COVINGTON, DENNY BOWMAN, JOSEPH CONDIT, TERRY HUGHES, DANIEL ZALLA, JOHN ELFERS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

The City of Covington, Kentucky, Denny Bowman its Mayor, Joseph Condit, and Terry Hughes respectfully present the Court with their Brief in Opposition to the Petition of Eddie Thompson, Jr. and Patricia Thompson, who seek a review of a decision of the United States Court of Appeals for the Sixth Circuit, Case No. 91-5495.

STATEMENT OF THE CASE

Eddie Thompson, Jr. and Patricia Thompson, husband and wife, filed a complaint on September 14, 1990 in the United States District Court for the Eastern District of Kentucky seeking money damages for an alleged racially based conspiracy against them. They claim the conspiracy culminated in a foreclosure of three parcels of real estate in 1976 and a beating and arrest in 1978. The District Court dismissed the Complaint as barred by the Statute of Limitations. The trial judge held,

> "In *Owens* v. *Okure*, 109 S.Ct. 573 (1989), the Supreme Court held that the state law governing residual or general or personal injury actions shall provide the Statute of Limitations for Section 1983 actions. The Sixth Circuit recently eliminated any confusion regarding the applicable Kentucky statute. "[S]ection 1983 actions in Kentucky are limited by the one year Statute of Limitations found in Section 413.140(1)(a)." *Collard* v. *Kentucky Board of Nursing*, 896 F.2d 179, 182 (6th Cir. 1990) See also *Holbert* v. *West*, 730 F.Supp. 50, 52, n.1 (E.D. KY. 1990); *Hambrick* v. *Davies*, 711 F.Supp. 884, 885-886, (E.D. KY. 1989). The Statute of Limitations begins to run when the Plaintiff knows or has reason to know of the injury which is the basis of his action. *Sevier* v. *Turner*, 742 F.2d 262, 273 (6th Cir.).

In their "Statement of Facts" the Petitioners state that the facts of this case are not in dispute. That statement is incorrect as the allegations of the Complaint are categorically denied. No answer to the Complaint was filed by Bowman, Condit, Hughes, or the City of Covington, but timely motions under FRCP (12) were filed and served asserting the affirmative defense of limitations.

SUMMARY OF THE ARGUMENT

THE COMPLAINT OF EDDIE AND PATRICIA THOMPSON WAS BARRED BY THE ONE YEAR STATUTE OF LIMITATIONS APPLICABLE TO CIVIL RIGHTS ACTIONS ARISING IN KENTUCKY.

The actions alleged in the complaint of the Thompsons occurred from 1976 to 1978. The District Court observed that "subsequent conveyances of the three parcels, which the Plaintiffs maintain were effected in order to conceal the initial fraudulent foreclosure, occurred in the latest instance in 1988." Thus, even with the latter incredible allegation, the one-year Statute of Limitations applicable to civil rights actions in Kentucky bars the cause of action stated in the complaint.

ARGUMENT

Section 1983 actions in Kentucky are limited by the one-year Statute of Limitations found in KRS 413.140(1). *Collard* v. *Kentucky Board of Nursing*, 896 F.2d 179, 182 6th Cir. (1990); *Owens* v. *O'Curra*, 109 S.Ct. 573 (1989).

CONCLUSION

The filing of this petition for a Writ of Certiorari is a harrassing and frivolous exercise in appellate litigation. It should be dismissed.

Respectfully submitted,

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